

Datum: NAD83/WGS84

**Place of Use (See Attached Map)**

PARCELS (NOT LISTED FOR SERVICE AREAS)

## LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

**Findings of Facts**

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is not available for change since the existing and proposed sources are not the same body of public ground water.

Therefore, I ORDER DENIAL of application for change to Ground Water Certificate No. G3-26916C.

**Your Right To Appeal**

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this       day of       2016.

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Keith Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

## INVESTIGATOR'S REPORT

Dan Tolleson, Department of Ecology  
Ground Water Certificate No. G3-26916C  
Broetje Orchards

### BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number CG3-26916C, under Ground Water Certificate No. G3-26916C. Ralph Broetje proposes two separate and distinct irrigation projects under this change application, which are the Jubilee Youth Ranch and the leased Department of Natural Resources lands.

#### EXISTING Water Right Attributes

<b>Water Right Owner:</b>	D & K Frozen Foods
<b>Priority Date:</b>	4/3/1981
<b>Place of Use</b>	A parcel of land situated in the NW¼ of Sec. 19, T 7 N., R. 36 E.W.M. in Walla Walla County, Washington, see file for a complete description.

County	Waterbody	Tributary To	WRIA
Walla Walla	Groundwater		32-Walla Walla

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Industrial (frozen foods) and commercial domestic use	1500	GPM	2400	1/1	12/31

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Well (basalt)	360719240010		7 N.	36 E.	19	SE¼NW¼	46.0717	118.3597

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section;  
WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

### REQUESTED Water Right Attributes - Jubilee Youth Ranch

<b>Applicant Name:</b>	Broetje Orchards
<b>Date of Application:</b>	12/23/2005
<b>Place of Use</b>	NW¼ of Section 1 and the N½ of Section 2, all within T. 10 N., R. 33 E.W.M.

County	Waterbody	Tributary To	WRIA
Walla Walla	Groundwater		33-Lower Snake

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Irrigation of 130 acres, frost & heat protection	900	GPM		3/1	11/15

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Well 1 (constructed)	331001110002		10 N.	33 E.	1	SE¼NE¼	46.3768	118.6194
Well 2 (proposed)	331004410002		10 N.	33 E.	4	NE¼SE¼		

### REQUESTED Water Right Attributes - Wallula Area - DNR Leased Land

<b>Applicant Name:</b>	Broetje Orchards
<b>Date of Application:</b>	12/23/2005
<b>Place of Use</b>	N½SE¼ of Section 24, T. 7 N., R. 31 E.W.M. (land is owned by Washington State Department of Natural Resources)

County	Waterbody	Tributary To	WRIA
Walla Walla	Groundwater		32-Walla Walla

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Irrigation of 80 acres, frost & heat protection	600	GPM		3/1	11/15

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
A well (constructed)	310724330002		7 N.	31 E.	24	SW¼SW¼	46.0669	118.8839

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

### Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed change.

#### *Public Notice*

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in The Waitsburg Times on March 23 and 30, 2006. No protests were received regarding this notice.



*State Environmental Policy Act (SEPA)*

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

*Water Resources Statutes and Case Law*

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*.

The holder of the right may change the manner or purpose of use. The Washington State Supreme Court held in *Merrill* that a water right holder may change the season of use when related to a change in the purpose of use of a water right. A change in the purpose of use can be approved only after the water has first been applied to beneficial use.

RCW 90.44.100 allows Ecology to amend a ground water permit to (1) allow the user to construct a replacement or additional well at a new location outside of the location of the original well, or to (2) change the manner or place of use of the water, if:

- (a) The additional or replacement well taps the same body of public ground water as the original well. RCW 90.44.100(2)(a),
- (b) Where a replacement well is approved, the user must discontinue use of the original well and properly decommission the original well. RCW 90.44.100(2)(b),
- (c) Where an additional well is constructed, the user may continue to use the original well, but the combined total withdrawal from all wells shall not enlarge the right conveyed by the original permit or certificate. RCW 90.44.100(2)(c),
- (d) Other existing rights shall not be impaired. RCW 90.44.100(2)(d).

When changing or adding points of withdrawal to groundwater rights (RCW 90.44.100), or when consolidating exempt wells with an existing permit or certificate (RCW 90.44.105), the wells must draw from the *same body of public groundwater*. Indicators that wells tap the *same body of public groundwater* include:

- (a) Hydraulic connectivity.
- (b) Common recharge (catchment) area.
- (c) Common flow regime.
- (d) Geologic materials that allow for storage and flow, with recognizable boundaries or effective barriers to flow.

## INVESTIGATION

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In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, and claims; (3) USGS topographic maps and aerial photographs; (4) wells, water delivery systems and places of use; (5) Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32 and Watershed Planning; (6) State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); and (7) discussions with Department of Ecology regional program staff.

Ralph Broetje proposes two separate and distinct irrigation projects under this change application, which are the Jubilee Youth Ranch (Youth Ranch) and the leased Department of Natural Resources lands (DNR lands). The Jubilee Youth Ranch project is located near the Snake River, approximately 26 miles Northwest of Walla Walla, Washington. The DNR project is located near the mouth of the Walla Walla River, which is approximately 24 miles west of the Walla Walla, Washington. The originally authorized place of use of this certificate is within the western portion of the City of Walla Walla. A field investigation of the originally authorized place of use and the DNR land was conducted by Dan Tolleson on October 27, 2015. A second field investigation of the Jubilee Youth Ranch was conducted by Dan Tolleson and Eric Hartwig, with Bill Neve on November 19, 2015. The Jubilee Youth Ranch is located within the Lower Snake Watershed, WRIA 33, which has no active watershed planning. The original authorized place of use and the DNR lands are located in the Walla Walla Basin, WRIA 32, which is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin.

The original authorized place of use is an old frozen foods packing plant located within NW¼ of Section 19, T. 7 N., R. 36 E.W.M. This facility has been repurposed and is now operated by Cliffstar as a bottling plant. The original authorized well is not accessible, since the water right was sold to Ralph Broetje separately from the land.

The proposed place of use for the Youth Ranch portion of the project is within the NW¼ of Section 1 and the N½ of Section 2, all within T. 10 N., R. 33 E.W.M. This parcel of land has been partially developed with orchards and the Jubilee Youth Ranch. The Youth Ranch has irrigated fields, lawns and various associated buildings. Two wells are proposed for this portion of the project. Proposed Well No. 1 is located within the SE¼NE¼ of Section 1, T. 10 N., R. 33 E.W.M. This well is currently utilized by other existing water rights. Proposed Well No. 2 has not been constructed, but is planned to be located within the NE¼SE¼ of Section 4, T. 10 N., R. 33 E.W.M.



The proposed place of use for the DNR lands portion of the project is an undeveloped field in grasses and brush within the N½SE¼ of Section 24, T. 7 N., R. 31 E.W.M. This parcel of land is currently owned by the Washington State Department of Natural Resources and is proposed to be leased. Ralph Broetje has a long standing history of working with DNR and obtaining leases, which is the reason no official lease has been obtained. The proposed point of withdrawal for this portion of the project is located within the SW¼SW¼ of Section 24, T. 7 N., R. 31 E.W.M. This well is currently utilized by other existing water rights.

#### History of Water Use

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Ground Water Certificate No. G3-26916 was issued in 1983 with a priority date of April 3, 1981. This right originally authorized 1500 gallons per minute, 2400 acre feet for continuous industrial use and commercial domestic supply. Water was utilized under this right from the 1980s when it was authorized through 1995 when the business initially went bankrupt. No significant use of water occurred in 1996. The facility reopened in 1997 and the water right was utilized through January of 2001, at which time the business again went bankrupt. This was the last year of beneficial use under this water right. In January of 2002, the water rights were sold separately from the facility to Ralph Broetje. This application for change was received and accepted by Ecology in December of 2005. In November of 2014, a temporary trust donation was received and accepted for this right. On April 12, 2016, a request was made to withdraw this right from the trust program if an approval decision was made on this application.

According to RCW 90.14.140(c), a water right is not relinquished from nonuse if it is claimed for a determined future development to take place either within fifteen of the most recent beneficial use of the water right. Protect our Water v. Islander for Responsibility Water Mgt. PCHB No. 03-102 further defined this exception to have a two-part test. The first is that a fixed plan must be in place prior to the end of a five year relinquishment period. The second is that some affirmative steps must be taken toward the fixed plan within 15 years of the latest beneficial use of water. According to R.D. Merrill Co. v PCHB, 137 Wn.2d 118, 969 P.2d 458 the fixed plan need not be completed within the 15 year period, but must show affirmative steps being taken toward the project. The applicant obtained this water right separate from the land, a year after the last use of water, with the intention of developing the Youth Ranch and orchards within the DNR lands. It was at this time that the future determined plan was established, since water could no longer be utilized at the original place of use and was reserved for these two specific projects. In an effort to continue on with the plan, this change application was filed approximately 3 years after the water right was obtained. The applicant indicated it was an oversight that lead to the delay in filing the change application. Further steps were taken by the applicant to continue on with this project, which included development and promotion of the youth ranch. This water right was also put into the trust program to provide additional protect from relinquishment. These actions indicated that a determined future developed was established and significant steps were taken to develop the project. Although this water right has not been utilized since 2001, the beneficially used portion of the right remains in good standing and available for the change proposed under this application.

According to Protect our Water v. Islander for Responsibility Water Mgt. PCHB No. 03-102, the extent and validity of a right proposed for a fixed plan, is determined by the highest use within the lowest five year period of beneficial use. The lowest use within a five year period occurred during 1997-2001. The highest use within that time frame was in 1997. The total production from all sources (G3-26916C, G3-27470C and city water) was estimated to be 886 acre feet. Water use under this right over time resulted

in an average of 50% of the total pumped from all sources. This means that, in 1997, a maximum of 443 acre feet of water were withdrawn under this right.

Since the proposed change includes purpose of use, only the consumptive portion of the right can be changed to the new use. Return flows for a frozen foods processing plant vary significantly with the type of crop processed and the process utilized. It is estimated that on average 75% of the total pumped was consumptively utilized. Therefore, the maximum annual quantity available for this fix plan, under this water right, is 332 acre feet.

The maximum instantaneous quantity authorized under this right is 1500 gallons per minute. Limited information exists on the pumping capacity of the originally authorized well. This water right was used for a frozen foods processing plant, which typically use most of their water in the summer through late fall when crops become available. The system design did not have a large storage capacity which means water would have been withdrawn as needed during a typical work day. A calculation of 1500 gallons per minute, pumped for 8 hours day within a six month period would result in a total withdraw of approximately 400 acre feet. Therefore, it is estimated that the maximum instantaneous quantity was put to use given the system design, typical use of water and the amount of water withdrawn.

#### Proposed Use

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Ralph Broetje originally requested that this water right be changed to irrigation within two project locations. This original quantity proposed for the Youth Ranch portion of the project was for 130 acres of irrigation. This request has since been reduced to a total of 80 acres, since 50 acres of the proposed place of use was developed under a different right. The quantity proposed for the DNR lands portion of the project was 80 acres of irrigation. The applicant has also requested that any water available for change be allocated to the Youth Ranch portion of the project first.

#### Hydrologic/Hydrogeologic Evaluation

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The following hydrogeologic analysis was written by John Covert, Hydrogeologist, of the Water Resources Program Technical Unit in Ecology's Eastern Regional office.

The Applicant is proposing to move G3-26916C to two separate locations. The original point of withdrawal is a well located in Section 19 of T7N/R36E. The existing proposed points of withdrawal are located: A) a well near the Snake River in Section 1 of T10N/R33E; and B) a well near the Columbia River in Section 24, T. 7 N. R. 31 E.W.M.

The original point of withdrawal is a 10" diameter well originally drilled in 1946 to a total depth of 1125'. It was deepened in 1963 to a total depth of 1544'. The well is completed within the Columbia Plateau Basalts.

The proposed point of withdrawal near the Snake River (A) is a 16" well drilled to 1015' in 1995 and completed in the Columbia Plateau Basalts. The proposed point of withdrawal near the Columbia River (B) is a 12" well drilled to 743' in 1996. The well is completed within the Columbia Plateau Basalts.

Examination of USGS head maps for the Columbia Plateau Basalt aquifers in the area (USGS WRI Report 86-4046, Sheets 3 and 4) indicates that groundwater flow (yellow arrows on Map 1) near the original point of withdrawal (red plus sign on Map 1) is to the west and southwest, towards the Walla Walla

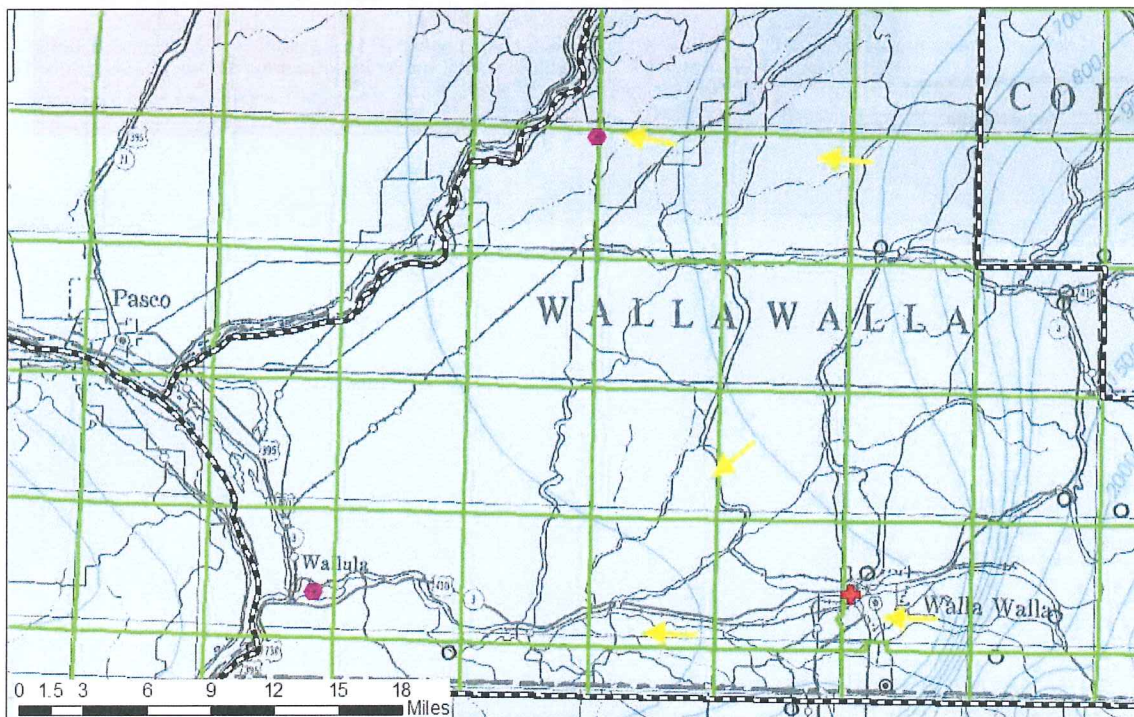


River and not toward the Snake River. This makes it likely that the original point of withdrawal and the well near the Snake River are not in the same body of public groundwater. The Snake River is the natural discharge point for the well near the Snake River (and that well has a head very near the elevation of the adjacent Snake River).

The well near the Columbia River is west of the Divide Anticline as mapped by Newcomb in 1965 (see Map 2, below). This anticline is a groundwater divide that separates the Walla Walla Basin from the greater Columbia Basin and has served as a tool for determining a number of same body determinations over the years for various changes under consideration by the department. The groundwater moving to the west and southwest at the original point of withdrawal (red plus sign on Map 3) will have discharged to the Walla Walla River before it makes it to the Divide Anticline. Groundwater moving towards the proposed location well adjacent to the mainstem of the Columbia River (magenta hexagon on Map 2 & 3 below) will be discharging to the McNary Pool of the Columbia River and thereby tapping a separate body of groundwater distinct from the original point of withdrawal.

For the reasons explained above, I don't believe the original point of withdrawal for this proposed change is in the same body of public groundwater as either of the proposed points of withdrawal.

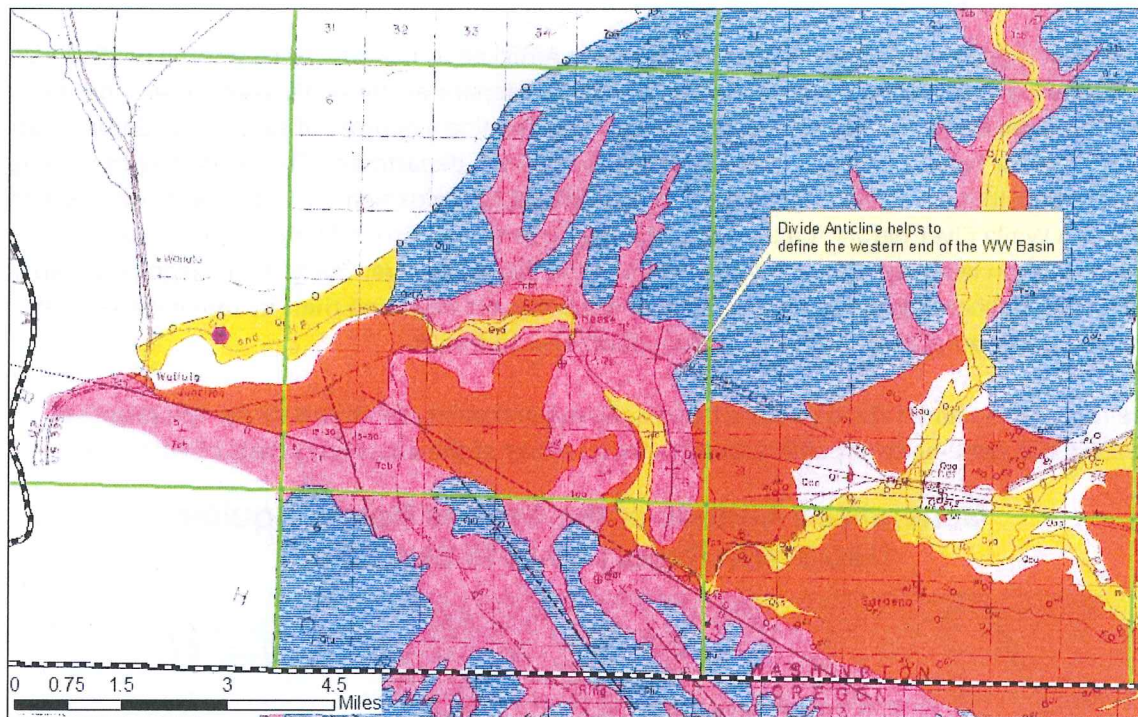
### **Generalized Altitude of the Grande Ronde Aquifer USGS WRI Report 86-4046 Sheet Four**



Ground-Water Levels in Three Basalt Hydrologic Units Underlying the Columbia Plateau in Washington and Oregon, Spring 1984 Water Resources Investigations Report 86-4046. K.J. Whiteman, 1986

Map 1

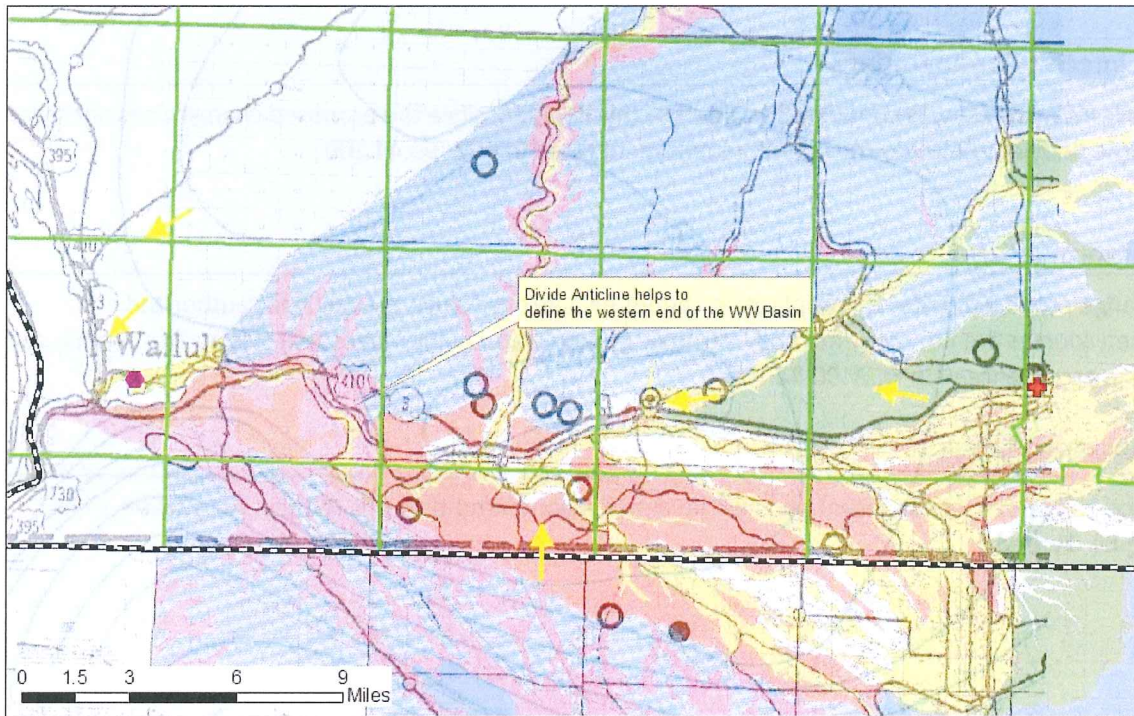
## Newcomb Map





## Map 2

### Generalized Altitude of the Wanapum Aquifer USGS WRI Report 86-4046 Sheet Three with Newcomb Map



Ground-Water Levels in Three Basalt Hydrologic Units Underlying the Columbia Plateau in Washington and Oregon, Spring 1984 Water Resources Investigations Report 86-4046. K.J. Whiteman, 1986

## Map 3

### RCW 90.44.100 Analysis "same body of public ground water"

According to the hydrogeologic analysis, the wells proposed under this application are not the same body of public ground water as that originally authorized. This means that this water right cannot be changed to any of the sources proposed under this application, in accordance with RCW 90.44.100. The extent and validity analysis above relies upon the determined future development exemption from relinquishment under RCW 90.14.140(c). Since this project cannot be developed, the determined future development exemption no longer applies and the above listed extent and validity may not be a valid representation of this right.

### Other Rights Appurtenant to the Place of Use

No analysis of overlapping water rights was conducted for the authorized and proposed places of use, since the proposed change does not meet the "same body of public ground water" requirement listed in RCW 90.44.100.



### Impairment Considerations

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No impairment analysis was conducted as a part of this decision, since the proposed change does not meet the "same body of public ground water" requirement listed in RCW 90.44.100.

### Public Interest Considerations

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No public interest test was conducted as a part of this decision, since the proposed change does not meet the "same body of public ground water" requirement listed in RCW 90.44.100.

### Conclusions

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The change proposed under this application cannot be approved since the originally authorized and proposed sources are not the same body of public ground water. This means that this application has to be denied in accordance with RCW 90.44.100.

### RECOMMENDATIONS

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Based on the above investigation and conclusions, I recommend that this request for a water right change be **Denied**.

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Dan Tolleson

Date

*If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*